(5) (4)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETTITION NO. 1887 /2003

UNDER ARTICLE 226 OF THE CONSTITUION OF INDIA

PETITIONER : M/S Jai Enterprises, A Partnership Firm , Chhatta Karkhana Campus ,Pandari Road Raipur (C.G.) through Power of Attorney Holder Shri Gopal Gupta, s/o Gaurishankar Gupta, aged 35 years, r/o Gole Bazaar Bilaspur (C.G.)

Versus

RESPONDENTS :

1. Union of India, through, Chairman Railway Board Railways, Rail Bhawan, New Delhi
2. South Eastern Central Railway, Bilaspur through Divisional Railway Manager , Division Bilaspur (Chhattisgarh)
3. Divisional Electrical Engineer (TRD), South Eastern Central Railway, Bilaspur (C.G.)
4. Senior Divisional Electrical Engineer (TRD), South Eastern Central Railway, Bilaspur (C.G.)

P. R. No. 1337/03
Presented by Shri Sumit Verma
dated 25.8.03

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आदेश पत्रक

W.P. No. 1887/03

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
1(2)	18.7.2003 Petitioner by Shri Alok Bakshi, Advocate. Respondents by Shri Vinay Harit, Standing Counsel for Railway. Heard. The petitioner/ Firm has preferred this writ petition under Article 226 of the Constitution of India in which the main grievance of the petitioner and the relief sought by the petitioner is that the order of termination of the contract work be set-aside, the respondents may kindly be directed to compensate by paying to the petitioner an amount and other relief. It has been averred in the petition that the petitioner is a partnership firm dealing in the business of electrical works. The firm takes contracts for doing several types of electrical works like electrification, installation of electric sub-stations and winding up of the same. The Respondent No.1 invited tenders for the works of dismantling of Booster Transformer with all accessories and Transporting them to the nearest OHE/PST/Traction Sub Station Depots (including loading and stacking) in Champa-Korba, Uslapur-Anuppur and Urkura-Durg sections of Bilaspur Division. The petitioner firm participated in the bid, its bid was found to be lowest	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and after negotiations for the said contract the agreement was entered into between the petitioner/firm and the Respondent No.1 which was signed by the Senior Divisional Electrical Engineer, Bilaspur on 11.5.2001 vide Annexure P/3. Initially the period for the contract was 180 days which was to expire on 11.12.2001 and the total work which was to be performed by the petitioner was Dismantling of 40 numbers of the Booster Transformers with all accessories and transporting them to the nearest depots. After execution of the agreement the petitioner requested for immediate communications about the exact locations and sight at which the work was to be performed. The above information was not given to the petitioner within due time and after several requests the railways finally gave the locations of the transformers where the dismantling was to be done vide Annexure P/5. Thereafter the respondents issued a letter dt. 25.8.2001 to the petitioner/firm regarding slow progress of the work. The petitioner personally met with the concerned officers and apprised them about the difficulties. The petitioner firm wrote a letter on 19.10.2001 (Annexure P/8) in which it was clarified that due to rainy season, non-cooperation of the railway in granting permission to the petitioner the work could not be completed within stipulated period. The petitioner

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

applied for extension of time on 3rd December 2001. In the meanwhile the petitioner also applied for release of the payments for the work already performed but the railways never took it seriously and ultimately released the payments for 9 numbers of transformers on 18.4.2002. On account of the delayed payment the petitioner suffered loss. Vide Annexure. P/17 though the Railway granted extension till 12.12.2002 but it showed it's vindictive attitude again in imposing 0.5% penalty on the petitioner. Ultimately letter dt. 29.3.2003 was issued whereby it was communicated to the petitioner that the railway has terminated the contract. The petitioner has to put all his labour at the site from 5.12.2002 till 29.3.2003 with the material and in this way he has suffered heavy loss. The petitioner sent a letter to the respondents on 11.4.2003 disputing the 7 days notice. On 18.4.2003 the railways issued a letter whereby they have shown their unwillingness to get the work done by the petitioner and casting aspersions on the petitioner's attitude, intention and efficiency, a copy of which is filed as Annexure P/24. The petitioner again wrote a letter to the respondents on 5.5.2003 disputing the termination and defining the reasons for delay in progress of work which is Annexure P/25. In response to that the Railway issued a letter dated 14.5.2003. In the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

facts and circumstances mentioned above it is clear that the action of the respondents in terminating the contract without any opportunity and without giving last chance is bad in law, illegal, improper, incorrect, unjustified, irrational, passed without application of mind and is against the principles of natural justice and hence is liable to be quashed.

The respondents in Preliminary objections para-2 have mentioned that the letter dated 18.4.2003 was only a warning to the petitioner given about the intention of the respondents to terminate his contract because of the reasons given in that letter and the other letters issued by the respondents to him which he himself has annexed in this petition. As the respondents have not taken action for terminating the contract of the petitioner till date, his petition is premature because till this date he has got no cause of action against the respondents. His petition deserves to be dismissed on this ground only.

I have heard learned counsel for the petitioner. He submitted that the respondents are not allowing him to execute the work at the site but when the specific question was put to the learned counsel for the petitioner that as per the reply of the respondents his contract still

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आदेश पत्रक

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

subsists and that has not been terminated then learned counsel tried to draw the attention of this Court towards the letter dt. 18.4.2003 Annexure P/24 and submitted that this amounts to termination of the contract.

A bare perusal of the letter dt. 18.4.2003 reveals that the respondents/authorities have expressed their unhappiness over the attitude of the petitioner and about his conduct and performance, as he has not able to execute the contract even after giving sufficient time and reasonable extension. Para-4 of this letter reads thus :- " Due to non-execution of the work by you, Railway Administration has suffered inconvenience and loss but even though under Section 17-A, one time extension was given to you and under Section 17-B, second extension was given to you. The Railway Administration has failed to understand why you kept on asking extension after extension without completion of the work. Now, Railway Administration has concluded that you have got no capacity to execute the work and, therefore, going ahead with termination of the contract and processing the same on "Risk and Cost" basis." A bare perusal of this letter reveals that by this letter the respondents have not terminated the contract of the petitioner. Even thereafter the petitioner applied for extension of period vide letter

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

dt. 5.5.2003 (Annexure P/25) the respondents have replied vide letter dt. 12.5.2003 (Annexure P/26) in which nowhere it has been mentioned that the contract of the petitioner has been terminated.

Before parting with the matter I would like to observe that perusal of various communications exchanged between the parties reveal a very sad state of affairs that on the one hand the petitioner is trying to shift the blame for delaying of work on the respondents because of their non-cooperative attitude not allowing him to work by not giving him site clearances, not making payments for the work he has already executed etc. On the other hand respondents are trying to shift the blame on the petitioner for his incapacity, inefficiency and non performance of the contract. It reveals that both parties are busy to create grounds in their favour by documentary evidence. The Railway authorities should not forget that they are repository of public trust and they should ensure that public money should be utilized properly and work should be executed in a stipulated time in public interest. Merely by entering into paper war they are not going to serve the public purpose.

It is, therefore, directed that the respondents No. 2 and 3 will personally look into the grievances of the petitioner if the same are

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	found to be genuine then they should try to remove all those hurdles in order to enable the petitioner to execute the work within a stipulated period and even after that opportunity the petitioner is unable to perform/execute the work on his part then they should act with all promptness in accordance with the agreement clauses and other rights as available to them. With the above observations the petition is disposed of. A copy of this order be sent to the Respondents No. 2, 3 and 4. **Sd/-** **L.C.BHADOO** **Judge**	